

(2012) 01 KL CK 0123

In the High Court Of Kerala

Case No : Writ Petition (C) No. 21140 of 2011

Sinny Joshy

APPELLANT

Vs

Kerala Kera Karshaka Sahakarana

RESPONDENT

Date of Decision : 19-01-2012

Acts Referred:

Constitution of India, 1950 — Article 265
Kerala Co-operative Societies Act, 1969 — Section 81, 82
Kerala Co-operative Societies Rules, 1969 — Rule 108, 123

Citation : (2012) 1 KLJ 492

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : P. Sanjay, A. Parvathi Menon, Biju Meenattoor and M. Vanaja, for the Appellant; Mohammed Shiraz, (SC), for the Respondent

Judgement

V. Chitambaresh, J.—Is court fee payable on the memorandum of Cross Objection filed to an Appeal before the Kerala Co-operative Tribunal? This is the short question that arises for consideration in this writ petition. The petitioner had obtained an Award in a monetary dispute on the file of the Joint Registrar of Co-operative Societies (Marketing). The respondent preferred Ext.P1 memorandum of Appeal u/s 82 of the Kerala Cooperative Societies Act 1969 (the "Act" for short). The petitioner filed Ext.P2 memorandum of Cross Objection in so far as the Joint Registrar had negatived his claim. The Kerala Co-operative Tribunal has by Ext.P3 order returned the memorandum of Cross Objection with a direction to resubmit it with the prescribed court fee. The said order returning the memorandum of Cross Objection is impugned in this writ petition. The petitioner contends that neither the Act nor the rules framed thereunder warrant the levy of court fee on the memorandum of Cross Objection. The counsel further submits that such imposition of court fee is without any authority of law and violative of Article 265 of the Constitution of India.

2. Section 82 of the Act deals the right of appeal of any person, aggrieved to the tribunal constituted u/s 81 of the Act. Rule 123 of the Kerala Co-operative

Societies Rules, 1969 (the "Rules" for short) stipulates the rate of court fee payable in an appeal u/s 82 of the Act in regard to disputes. Rule 108 of the Rules deals with the procedure for filing the memorandum of Cross Objection and is extracted herein below: 108. Procedure for Cross Objection:

Provisions relating to an appeal/application shall apply mutatis mutandis to cross objections also except that it shall not be necessary to assign a separate serial number to it.

It is evident therefrom that all provisions relating to an appeal shall apply mutatis mutandis to cross objection also. However it is not necessary to assign a separate serial number to the memorandum of Cross Objection. It necessarily follows that Rule 123 of the Rules stipulating the rate of court fee payable in an appeal applies to Cross Objection also. It is settled law that Cross Objection is akin to an appeal and has all the trappings of an appeal. Even the form and contents of the memorandum of Appeal apply to memorandum of Cross Objection as well. Court fee is payable on the memorandum of Cross Objection like that on the memorandum of Appeal. The memorandum of Cross Objection has an independent existence even if the Appeal is withdrawn or dismissed for default. Only the necessity to file a separate memorandum of Appeal and take out notice to the opposite party is obviated. Ext.P3 order directing the memorandum of Cross Objection to be returned for representation with the prescribed court fee is perfectly legal. The levy of court fee on the memorandum of Cross Objection is by authority of law only and does not infringe Article 265 of the Constitution of India. Needless to mention that the insistence to remit nominal fee under the Legal Benefits Fund Scheme in addition can be extended to the memorandum of Cross Objection also. The petitioner is however given three weeks time from today to pay deficit court fee and other fee in the memorandum of Court Objection.

The writ petition fails and is dismissed.